

REMARKS

Applicants have received and reviewed an Office Action dated May 28, 2006. Claims 1-3, 31, 35-38, and 43-46 are allowed. Claims 6-9 and 39-42 remain rejected. By way of response, Applicants present the accompanying Declaration and Exhibit and the following remarks.

For the reasons given below, Applicants submit pending claims are in condition for allowance and notification to that effect is earnestly solicited.

Rejection of Claims Under §§ 102(a) and (e) and 103(a)

The Examiner rejected claims 6, 8, and 39-42 under 35 U.S.C. §§ 102(a) and (e) as anticipated by Hei (US 6,024,986). The Examiner rejected claims 7 and 9 under 35 U.S.C. § 103(a) as being obvious over Hei (US 6,024,986). Applicants respectfully traverse these rejections.

The Hei reference does not qualify as prior art under 35 U.S.C. §§ 102(a), 102(e), or 103(a). Applicants previously submitted a Declaration under 37 C.F.R. § 1.131 by John D. Hilgren, an inventor, establishing that the presently claimed invention was invented before May 24, 1999, the date of the Hei reference. In this Office Action, the Examiner questioned whether the invention was made in the United States. Applicants hereby submit an additional Declaration under 37 C.F.R. § 1.131 by Mr. Hilgren stating at paragraph 4 that the invention was made in the United States and before May 24, 1999. Thus, the Hei reference cannot be employed as prior art under §§ 102(a), 102(e), or 103(a).

Accordingly, based on the foregoing, it is submitted that the Hei reference does not anticipate or make obvious the present compositions and withdrawal of these rejections is respectfully requested.

Terminal Disclaimer

The Examiner requested that Applicants submit a Terminal Disclaimer with respect to U.S. Patent No. 6,024,986 (the '986 patent) to expedite prosecution. In particular, the Examiner requested that Applicant submit a Terminal Disclaimer "if appropriate, in order to expedite prosecution."

Applicants interpret this statement to mean that, if they do not provide a Terminal Disclaimer, the Examiner will issue another Office Action including an obviousness type double patenting rejection of at least certain claims of the present application over certain claims of the '986 patent. Applicants believe that the Examiner's reasoning is that an obviousness-type double patenting rejection is not appropriate until the '986 patent is disqualified as prior art against the present application. (In an obviousness-type double patenting rejection "the patent principally underlying the double patenting rejection is not considered prior art." (citation omitted), MPEP 804 II.B.1.). Therefore, the Examiner cannot properly raise an obviousness-type double patenting rejection until the '986 patent is disqualified as prior art. Applicants interpret the Examiner's statements in the Office Action to mean that he will make such a rejection upon acceptance of the accompanying Hilgren Declaration.

Accordingly, solely to expedite prosecution by preventing the Examiner from issuing another Office Action including an obviousness-type double patenting rejection, Applicants submit herewith a Terminal Disclaimer. Applicants respectfully submit that a Terminal Disclaimer is not required in the present application.

Summary

In summary, Applicants submit that each of claims 1-3, 6-9, 31, and 35-46 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,
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Date: May 25, 2006

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